



THE CITY OF SAN DIEGO **MANAGER'S REPORT**

DATE ISSUED: May 31, 2001 REPORT NO. 01-118

ATTENTION: Public Safety and Neighborhood Services Committee
Agenda of June 6, 2001

SUBJECT: City Manager's Interim Equal Opportunity Contracting Program (EOCP)
Status Report

SUMMARY

Issues - 1) Should the City Council accept the City Manager's Equal Opportunity Contracting Program's Biannual Status Report for the First Half of FY 2001?

2) Should the City Council adopt policy changes for the Equal Opportunity Contracting Program to enhance the participation of under represented groups in contracting?

Manager's Recommendation - Accept the report.

- Adopt recommended policy changes.

Fiscal Impact - None.

BACKGROUND

On March 7, 2001, Equal Opportunity Contracting Program (EOCP) staff brought before the Public Safety and Neighborhood Services Committee (PS&NS), a biannual report on the status of contracting activity for the period January 1, 2000 through June 30, 2000 (CMR #01-047). The report focused on the participation levels of construction, consultant and vendor/supplier contractors by race and gender. In response to the report, committee members directed staff to work with representatives of the contracting community to address the perceived inequity in the allocation of contracting dollars.

In response to the concerns of PS&NS, EOCP formed an ad hoc committee to identify issues affecting the City's participation levels in contracting, and formulate recommendations to remedy said issues. In addition to representatives of the City Attorney's Office, the ad hoc committee included representatives of the Black Contractors Association, the Earl B. Gilliam Bar Association, Latino Builders, the Multi Cultural Contracting Group and the NAACP. The first in a series of meetings was held on March 19, 2001.

In preparation for a meaningful exchange, the ad hoc committee members first reviewed the three (3) areas of contracting falling under the purview of this report: vendors/suppliers, construction and consulting. While vendor/supplier participation data is reported by EOCP, vendor/supplier contracts are awarded and monitored by the Purchasing Division.

Construction contracts are awarded using the low bid system as required by City Charter. Under this system, contracts are awarded to the "lowest, responsible" bidder defined as that bidder having the lowest dollar bid while also complying with federal, state and city imposed regulations such as bonding, insurance and EOCP requirements. Construction projects are typically advertised for a minimum of 21 days. An ad is placed in the Daily Transcript Newspaper, a notice is posted on the City's web site, and plans and specifications are available for review and/or purchase in several locations. Sealed bids are received at the date, time and location noticed in project advertisements. All bids are opened in a public meeting.

Bids must include the bid sheet summarizing the contractor's estimated total cost to complete the work; the subcontractor list, naming all subcontractors who will receive more than one-half of 1 percent (0.5%) of the prime contractor's bid amount; the vendor/supplier list, naming all vendors/suppliers who will receive more than one-half of 1 percent (0.5%) of the prime contractor's total bid amount; proof of bonding (for projects of \$100,000 or more); and proof of insurance. Contractors must also demonstrate compliance with city, state and/or federal equal opportunity contracting requirements with specific requirements in this area contingent upon the funding source. The goals and requirements of state and federally funded and federally assisted projects varies by the specific agency providing the funding.

The equal opportunity requirements for City of San Diego-funded projects are as follows:

Construction projects of less than \$100,000 include a voluntary subcontracting goal of 20 percent. There are no conditions as to whom the work can be subcontracted and there is no penalty for failure to subcontract.

For construction projects equal to or greater than \$100,000 contractors are subject to the Subcontractor Outreach Program (SCOPE). The purpose of SCOPE is to maximize subcontracting opportunities for all qualified and available firms, *and* to provide equal opportunity for all subcontractors to participate in performance of City contracts through the mandatory use of subcontractors at a percentage level determined by a City engineer on a project-by-project basis, *and* mandatory broad-based outreach in the solicitation of sub-bids by prime contractors, *and* mandatory submission of outreach documentation by the prime contractor within five (5) working days from the date of bid opening. A bidder will be rejected as non responsive if required outreach documentation is not received within five (5) working days, *or* Indicator

Points for outreach total less than 80 out of a possible 100 available points, *or* any sub-bid was rejected for unlawful discriminatory reasons, *or* if the mandatory subcontracting goals are not met. While subcontracting is mandatory, there are no conditions as to whom the work can be subcontracted.

Consultants are selected through a negotiated process. Selection panels comprised of City staff and, in some cases, community members, review technical proposals and interview interested firms. The interview factors, questions and scoring methodology are determined by the requesting department. Factors that are typically considered include: experience/history of the firm, experience of the proposed team members, knowledge of the project, safety, and commitment to equal opportunity in hiring and subcontracting. Processes for projects valued at \$100,000 or more must include a representative from EOCP on the panel. The results of the technical proposal and interview process are combined with the firm's cost proposals to determine the winning firm.

The consultant awards most commonly brought before the City Council are architectural and engineering consultant agreements (A&E). The City of San Diego hires consultants for A&E related projects when the City lacks either the necessary time or expertise to use in-house design. On those occasions, consultants are selected by a Department selection panel. The Department selection panel is normally comprised of the Project Manager (PM) and two to four other members. The other members may be other City Engineers (Assistant, Associate or Senior Engineers) or other employees of the same Division (Assistant Deputy Directors, Deputy Directors, etc.). The panel may also include representatives (Engineers or others) from other Divisions or Departments, Equal Opportunity Contracting Program (EOCP) Contract Compliance Officers, representatives from other government agencies or community members.

During this review period, 43 new A&E consultant contracts were awarded to 35 individual firms City-wide. Ninety- nine (99) individual consultant firms were interviewed, with some firms interviewing multiple times, resulting in a total of 155 interviews held in nine (9) City Departments (Attachment 1).

The participation levels for the first half of fiscal year 2001 were achieved under the selection methods discussed above.

DISCUSSION

Contract Participation Data

During the reporting period (July 1, 2000 through December 30, 2000), consideration was given by EOCP to the total level of contractor participation and the distribution of contracting dollars among Minority/Women/Disadvantaged/Disabled Veteran/Other Business Enterprises (M/W/D/DV/OBE). The total dollar amounts committed to consultant and major construction contractors on City projects during the reporting period were \$167,661,054.64, including a commitment of \$79,655,842.41 for construction related contracting and a commitment of \$88,005,212.23 for consultant related contracting. Awards to certified MBE/WBE/DBE/DVBE firms totaled 6.05 percent for construction and 14.77 percent for consultants. The distribution of these contracting dollars is graphically illustrated in Attachments 1 through 4.

The Purchasing Division, for commodity, minor construction and services, awarded \$46,211,816 in contracts as follows:

| | COMMODITY | MINOR CONSTRUCTION | SERVICES | TOTAL |
|--------------|---------------------|-------------------------------|---------------------|---------------------|
| MBE | \$899,866 (3.3%) | 14,086 (5.8%) | 1,881,397 (10.1%) | 2,795,349 (6%) |
| WBE | 506,869 (1.9%) | 2,620 (1.1%) | 1,090,322 (5.8%) | 1,599,811 (3.5%) |
| OBE | 25,901,925 (94.8%) | 224,027 (92.1%) | 15,685,630 (84.1%) | 41,811,582 (90.5%) |
| TOTAL | \$27,308,660 | \$243,804 | \$18,659,352 | \$46,211,816 |

The participation levels identified above and in the accompanying attachments underscore the need for reforms in the Equal Opportunity Contracting Program. In formulating recommendations and changes, EOCP considered, in addition to the input of the ad hoc committee, the input of the Subcontracting Subcommittee. The Subcontracting Subcommittee is a subcommittee of the Public Works Advisory Committee (PWAC). The main committee, PWAC, is chaired by the Equal Opportunity Contracting Manager, includes industry representation and representatives of other local agencies, and provides equal opportunity oversight of the City's major construction efforts. The Subcontracting Subcommittee was formed to address the unique concerns of small public works subcontractors. Among the barriers and obstacles identified by this group are: the obtainment of bonding, insurance and financing; limited access to technology; lack of relationships and/or networking opportunities with prime contractors; low bid system and insufficient outreach.

Program Enhancements

With the assistance and support of the ad hoc committee, EOCP staff has evaluated the effectiveness of current practices and made recommendations for improvement designed to address the barriers and obstacles identified as affecting small or disadvantaged prime and subcontractors. Some of the needed changes that were identified by staff and/or the committee have been made and include the following:

1. Reorganization - for approximately the last six (6) years, EOCP has been a section within the Engineering & Capital Projects Department. In May 2001, the City Manager moved EOCP to the Office of the City Manager. This important restructure has restored EOCP to full program status.
2. The Engineering & Capital Projects and Water Departments have agreed to pilot procedural changes in the selection of consultants. In this pilot program, selection panels will move away from rigid scoring systems and, whenever feasible, consider a firm's community involvement and outreach efforts in addition to their technical expertise. Additionally this will begin providing more opportunities to new firms.

3. With the assistance of the Organizational Effectiveness Program, EOCP will hold a summit on June 15, 2001, with architectural and engineering consulting firms to discuss methods of increasing the diversity of their workforce. In a half-day session, City staff and consultant staff will work to develop a plan to address the under representation that currently exists in the workforce composition of the firms we regularly do business with.
4. The Water Department is engaged in an \$875 million capital improvements program. In an effort to ensure participation by a broad range of contractors and address the barriers identified by subcontractors, the Water Department and EOCP will hold a bidder's forum in early summer, 2001. Large and small firms will be invited in to hear a projection of upcoming construction work in the Water Department. Forecasting the projects will provide contractors, particularly small firms, with sufficient time to allocate financing and staff/equipment resources necessary to bid at the prime or subcontractor level. The venue will also serve as an opportunity for small firms to network with larger firms. And, City staff will take the opportunity to articulate the City's philosophy and mission related to contracting and equal opportunity.
5. Second tier subcontractors, that is, subcontractors performing work for another subcontractor retained by the prime contractor, will be tracked on projects of one million dollars or more. The scope and complexity of such projects require the use of multiple levels of subcontractors. While staff currently tracks and reports on prime contractors and first tier subcontractors only, field observations would suggest that there is greater diversity at the second tier level than seen at the prime or first tier subcontractor levels. This perceived diversity warrants exploration and recognition.
6. A survey of certified disadvantaged, minority and woman owned construction business enterprises are underway. The survey results will assist EOCP staff in determining the number of certified firms that are ready, willing and able to perform public works construction for the City of San Diego. Such benchmark data is crucial in determining the success of program changes.
7. The E&CP Department is studying the feasibility of a pre-qualification program for construction contractors. The matter will be heard before the Land Use and Housing Committee on June 27, 2001. The impact of such a program on small, emerging contractors is yet to be determined.

Further Recommendations

The enhancements identified above begin to frame a new direction for EOCP. Below is a series of other recommendations that constitute significant policy changes and require significant staff time and expense to study and develop. To ensure resources are used wisely, before further work is done, staff is seeking direction as to which of the following recommendations to pursue.

1. Add Apprenticeship Requirements to City-Funded Construction Projects - State and federally funded projects include mandatory provisions for the use of apprentices. City-funded projects have no such requirement. In the short term, apprenticeships open the door for members of under represented groups to enter the construction industry. It is at the apprentice level that we have the highest probability of significantly diversifying the construction workforce. In the long term, these individuals become journey-level, skilled trades' persons. A percentage of these journeymen will move on to become foremen or superintendents, and ultimately, owners of their own construction firms, thus increasing our pool of available certified contractors. Monitoring for compliance with apprenticeship requirements is labor intensive.
2. Minor Construction - Minor construction is currently defined as construction contracts of \$25,000 or less. The bonding threshold previously set at \$25,000 consistent with the minor construction threshold, is now \$100,000. It is recommended that the threshold for minor construction be raised to \$99,999.99 to again be consistent with the bonding threshold. And that a minor construction program be structured to assist small and disadvantaged contractors, wherein such firms can gain expertise and grow their capacity in a controlled, sheltered environment.

A review of construction industry trends in this economic climate supports the assumption that projects of less than \$100,000 are minor. Projects in this range are smaller in scope, shorter in duration and require limited, if any subcontractor participation. As such, these projects are ideal for small, emerging contractors.

Raising the threshold for minor construction will be of no benefit if a program is not structured to ensure the participation of small, emerging and disadvantaged contractors. There are two methods by which this can be accomplished:

- a. Create a City-wide General Requirements Contract (previously referred to as Job Order Contract). General Requirements Contracts (GRC) have been used successfully by various City Departments. The GRCs currently in place in the Engineering & Capital Projects, Metropolitan Wastewater and Water Departments have increased efficiency by allowing said departments to award and complete projects on a task basis; a method that is more expedient than the traditional advertise and award process. These GRCs have also realized significant DBE participation levels, with 56.2 percent DBE participation during the reporting period (Attachments 5 and 6). It is anticipated that these results could be duplicated by bundling the various minor construction projects that are now bid individually.

- b. Create a Small, Emerging Business Program. Limit qualified bidders to those firms certified as small, emerging businesses. Small businesses often experience difficulty competing with larger, more experienced firms that own their own equipment, instead of renting, and/or have the ability to purchase supplies in bulk, both of which lower the cost of doing business, resulting in lower bids. Such a small, emerging business program levels the playing field by ensuring that all bidders are of par economically.

This approach necessitates the creation a new certification program. Contractors would be required to submit to a certification process in order to qualify. City Attorneys have opined that the DBE certification issued by CalTrans and the City, on behalf of CalTrans, could not be used for this purpose due to the presumptions accorded to certain races inherent in the DBE certification. EOCP must continue to certify on behalf of CalTrans in order to support the requirements of state and federally funded projects. As one of only two agencies authorized to certify under CalTrans in this region, failure to provide this service would cause harm to local firms seeking DBE certification. With only one certification officer, EOCP does not have the staff resources to administer a second certification program.

Construction projects of \$25,000 and less are managed by the Purchasing Division while major construction projects are managed by E&CP. The adoption of either of the above programs will warrant a reorganization, moving minor construction out of the Purchasing Division and into E&CP.

3. Eliminate Low Bid - Direct staff to analyze alternative bidding systems. For the reasons previously discussed, low bid favors larger, established firms. As the City Charter calls for the award of contracts to the lowest, responsible bidder, the elimination of low bid would require a charter change.
4. Incentives to Outreach - Members of the ad hoc committee have recommended that the City acknowledge the cost incurred by contractors conducting meaningful outreach by including it as a line item in the bid at a set value of the contract. The benefits of such an approach are not clear.

As an alternative, consideration should be given to contracting with a consultant, with industry expertise, to conduct outreach to the broader contracting community on behalf of the City. While EOCP performs, and will continue to perform outreach, with one outreach analyst in the program, our ability to be effective is somewhat limited.

While addressing the issue of outreach is worthwhile, outreach alone is likely to yield limited or no change in the participation levels achieved by the City. Outreach will only be effective if included as a part of other programmatic changes addressing the systemic issues.

5. Expand the Mentor-Protege Program - The City's Mentor-Protege Program, run by the Community Services Division, currently funds three (3) proteges. The proteges selected for this program meet the criteria established for merging businesses. However, their businesses have more developed in work histories than a start-up one or two person

operations. It is recommended that a companion program be funded to assist smaller, start-up prime contractors and/or subcontractors requiring greater assistance in the rudimentary aspects of public works bidding, bonding, insurance, records keeping etc. These are themes that have consistently been raised as issues among smaller firms. The current cost under the City-administered program is \$15,000 per protege.

6. Explore and Create Partnering Opportunities - Construction is a boom industry in San Diego County. The level of construction activity within the City is also being experienced by other local public and private agencies. By partnering with other agencies such as the County Water Authority, the Port District, the San Diego Unified School District, the redevelopment agencies and private developers, we can maximize our resources and develop a County-wide strategic approach to contracting and inclusion.
7. Distribute Federal Dollars Through All Construction Projects - Federally funded and federally assisted projects include mandatory DBE goals. The federal dollars received annually by the City for construction projects could be distributed among various projects thus necessitating compliance with federal equal opportunity requirements, thereby superceding the California Constitution and Proposition 209. Further review by the Office of the City Attorney is required to determine the ramifications and legality of such an action.

It must be noted that such federal funds also require the payment of prevailing wage rates. The potential impact of which is an increased cost of doing business for contractors, passed on to the City through higher bids. It is recommended that the Citizen's Equal Opportunity Commission (CEOC) be given direction to work with EOCP in studying the effects of prevailing wages on the City and the contracting community. Such a study dovetails into the work contained in the Community and Economic Development Department Strategic Plan to address regional economic issues.

[NOTE: Item #7 is a staff recommendation. It was not discussed by the ad hoc committee]

At this time, there is insufficient analysis to determine the fiscal impact of the above recommendations (Refer to Attachment 8 for matrix summarizing the above recommendations).

The City's efforts toward infrastructure enhancements, street and sidewalk improvements, and redevelopment City-wide, will result in the allocation of tremendous dollars for contracting over the next several years. It is essential that we take advantage of this window of opportunity and put in place measures that will ensure that said dollars are allocated equitably. The City of San Diego has an ethical responsibility to serve the needs of the community as a whole. Further, it is illegal to discriminate in the awarding of contract dollars. The California Constitution, though restrictive in the remedies and approaches afforded to local agencies, states that it is illegal to discriminate against individuals and/or groups of any race in the allocation of public funds. The recommendations contained in this report are intended to break down artificial barriers and create opportunities than benefit contractors of all races and sizes thus increasing local prosperity and meeting the greater good of our community.

ALTERNATIVE

Do not accept the report.
Do not adopt staff recommended policy changes.

Respectfully submitted,

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| _____ | _____ |
| Stevenson | Stacey |
| Equal Opportunity Contracting Manager | Approved: P. Lamont Ewell Assistant City Manager |

Ewell/SS

Note: The attachments are not available in electronic format. A copy is available for review in the Office of the City Clerk.

- Attachments:
- 1) Architectural and Engineering Consultant Selection by Department
 - 2) First Half - FY 2001 All Construction Projects Ethnic Distribution
 - 3) First Half - FY 2001 All Construction Projects Participation Levels
 - 4) First Half - FY 2001 All Consultant Projects Ethnic Distribution
 - 5) First Half - FY 2001 All Consultant Projects Participation Levels
 - 6) First Half - FY 2001 General Requirements Contracts Ethnic Distribution
 - 7) First Half - FY 2001 General Requirements Contracts Participation Levels
 - 8) Matrix of Staff Recommendations